

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DAVID TRAYLOR,

Plaintiff,

vs.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:10-CV-00289-RLH-(RJJ)

**ORDER**

Petitioner has submitted an amended complaint (#13). The court has reviewed it and, with one qualification, will ask the Attorney General of the State of Nevada whether she can accept service of process for those defendants who have not yet appeared.

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. North Star Intern. v. Arizona Corp. Comm’n, 720 F.2d 578, 580 (9th Cir. 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d 1037,

1 1039 (9th Cir. 1980). Allegations of a pro se complainant are held to less stringent standards than  
2 formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

3 In all of plaintiff's counts, he claims that the events that led to the destruction of his  
4 previously approved photographs violated the state and federal constitutions. To that extent,  
5 plaintiff has stated a claim. Plaintiff also claims that the defendants have committed oppression in  
6 violation of Nev. Rev. Stat. § 197.200. That statute is a provision of criminal law, and it does not  
7 create a civil cause of action. Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety, 110  
8 P.3d 30, 48 (Nev. 2005), abrogated on other grounds, Buzz Stew, LLC v. City of North Las Vegas,  
9 181 P.3d 670, 672 & n.6 (Nev. 2008). Defendants need not respond to the claim that they violated  
10 § 197.200.

11 Plaintiff has sued defendants Cox, Williams, and Skolnik in their individual and  
12 official capacities. An official-capacity claim is another way of suing the agency that employs the  
13 person; in this case, that would be the Nevada Department of Corrections, an arm of the State of  
14 Nevada. Kentucky v. Graham, 473 U.S. 159, 165 (1984). Normally, the Nevada Department of  
15 Corrections and the State of Nevada are not proper defendants in a civil rights action pursuant to 42  
16 U.S.C. § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 70 (1989); Doe v. Lawrence  
17 Livermore Nat. Laboratory, 131 F.3d 836 (9th Cir. 1997). However, plaintiff is seeking injunctive  
18 relief, which is a permissible official-capacity claim. See Ex Parte Young, 209 U.S. 123 (1908).

19 The amended complaint (#13) has added new defendants, Orr, Shubert, and Skolnik,  
20 who have not been served with process. The court will ask the Attorney General of the State of  
21 Nevada whether she will accept service of process on behalf of those defendants.

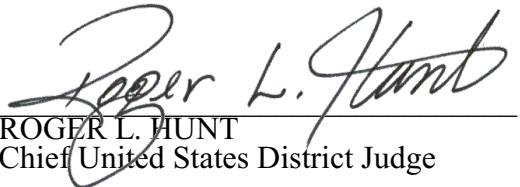
22 IT IS THEREFORE ORDERED that plaintiff's claims pursuant to Nev. Rev. Stat.  
23 § 197.200 are **DISMISSED** from this action.

24 IT IS FURTHER ORDERED that the Attorney General shall advise the court within  
25 twenty (20) days from the date that this order is entered whether service of process for defendants  
26 Orr, Shubert, and Skolnik is accepted. Within thirty (30) days of the date of the notice of  
27 acceptance of service or the notice of non-acceptance of service, the Attorney General shall file and  
28 serve an answer or other response to the amended complaint (#13) on behalf of the defendants who

1 have been served. If service cannot be accepted for any of the named defendants, then plaintiff will  
2 need to file a motion identifying the unserved defendant(s), requesting the issuance of a summons,  
3 and specifying a full name and address for said defendant(s).

4 IT IS FURTHER ORDERED that henceforth, plaintiff shall serve upon defendants  
5 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,  
6 motion or other document submitted for consideration by the court. Plaintiff shall include with the  
7 original paper submitted for filing a certificate stating the date that a true and correct copy of the  
8 document was mailed to the defendants or counsel for the defendants. The court may disregard any  
9 paper received by a district judge or magistrate judge which has not been filed with the clerk, and  
10 any paper received by a district judge, magistrate judge or the clerk which fails to include a  
11 certificate of service.

12 DATED: September 2, 2010.

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15 ROGER L. HUNT  
16 Chief United States District Judge  
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